

# State of Missouri

## Office of Secretary of State

Case No. AP-08-14

IN THE MATTER OF:

CHARLES D. MEDELBERG,  
CRD No. 1021432

*Respondents.*

Serve Charles D. Medelberg at:  
972 Kings Cove Court  
Chesterfield, Missouri 63017

### **CONSENT ORDER**

#### **BACKGROUND**

1. On April 4, 2008, a Form U-4 for Charles D. Medelberg ("Respondent") was filed to register Respondent as an agent with Morgan Stanley & Co. Incorporated. As a result of a customer complaint disclosed on the Form U-4 that Respondent failed to follow instructions regarding the sale of \$50,000 of auction rate securities while Respondent was registered as an agent with Merrill, Lynch, Pierce Fenner & Smith, Incorporated, on April 14, 2008 a non-reportable Withdrawal of Temporary Registration, and Summary Suspension of Agent Application ("Withdraw Order") was issued by the Commissioner of Securities pursuant to Section 409.4-408(c), RSMo. (Cum.Supp.2007), and the Missouri Securities Division ("Division") opened an investigation regarding the customer complaint.
2. Respondent and the Division desire to settle the matters raised in the customer complaint.

#### **CONSENT TO JURISDICTION**

3. Respondent and the Division stipulate and agree that the Commissioner has jurisdiction over Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, et seq.
4. Respondent and the Division stipulate and agree that the Commissioner has authority to enter this Consent Order of Conditional Registration pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2007), which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

#### **WAIVER AND EXCEPTION**

5. Respondent waives his right to a hearing with respect to this matter.

6. Respondent stipulates and agrees with the Division that, should the facts contained herein prove to be false, the Division reserves the right to pursue any and all legal or administrative remedies at its disposal.
7. Respondent stipulates and agrees with the Division that, should the facts contained herein prove to be false, the Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

### **CONSENT TO COMMISSIONER'S ORDER**

8. Respondent and the Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein
9. Respondent neither admits nor denies the Commissioner's Findings of Fact as set forth below but consents thereto solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

### **COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. From March, 1988, through on or around April 4, 2008, Respondent was registered in Missouri through the Central Registration Depository ("CRD") with number 1021432, was registered in Missouri as a securities agent at a branch office of Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill") located at 1630 South Lindbergh Blvd., Ladue, Missouri 63131. Respondent has an address of 972 Kings Cove Court, Chesterfield, Missouri 63017.
13. On or around April 4, 2008, Morgan Stanley & Co. Incorporated ("Morgan") filed a *Uniform Application for Securities Industry Registration or Transfer* ("Form U4") with the CRD to register Respondent as a securities agent in Missouri. This application revealed, among other things, that Respondent had one (1) customer complaint from a Missouri resident ("MR") within the last 10 years. In this complaint MR alleged, while registered as an agent with Merrill, Respondent failed to follow the customer's instructions regarding the sale of auction rate securities and misrepresented their liquidity.

#### *Missouri Resident*

14. Respondent was the agent of record for MR. Respondent stated, among other things, that:
  - a. MR spoke to Respondent in mid-January, 2008, regarding MR's need to liquidate her "seven day auction rate preferred securities [ARS]." The ARS that MR desired to liquidate were as follows:

- i. Six (6) shares, Cohen & Steers Qlty. M7 Taxable Pfd., Taxable Auction Mkt. Pfd., cusip no. 19247L700 --- \$150,000.00 par value.
    - ii. Two (2) shares, Pioneer Fl Rate Trus, TH7 Taxable Pfd., Taxable Auction Mkt Pfd., cusip no. 72369J409 --- \$50,000.00 par value.
  - b. MR informed Respondent that she would need the money from her auction rate preferred securities at the end of January.
  - c. Respondent instructed his assistant to "sell the securities so the proceeds would be available at month end."
  - d. The sell orders were entered on Friday, January 25, 2008, and the six (6) Cohen & Steers preferred shares sold at auction with proceeds totaling One Hundred Fifty Thousand (\$150,000.00) Dollars. The two (2) Pioneer preferred shares, totaling Fifty Thousand (\$50,000.00) Dollars, did not sell.
  - e. When MR "had the check picked up on Thursday, January 31, 2008, the remaining two shares had not been confirmed as sold yet on the auction. [Merrill] operations did a 'credit update' to advance [MR] the money pending the settlement of the expected auction proceeds the following day, Feb 1, 2008."
15. According to records provided by Merrill, the auction schedules for MR's preferred shares are as follows:
- a. Cohen & Steers preferred shares, cusip no. 19247L700 --- weekly auctions on **Monday**
  - b. preferred shares, cusip no. 72369J409 --- weekly auctions on **Thursday**
16. Auction rate preferred shares trade at auctions typically held every 7, 28, or 35 days, and the auction schedule varies from issue to issue. Just as there are terms and conditions a registered representative must know prior to the sale of a certificate of deposit (i.e., maturity date, penalties if sold prior to maturity, etc.), each issue of an ARS has terms and conditions of which a registered representative must be aware in order to ensure proper placement of trades.
17. Although Respondent acknowledges that he instructed his assistant to sell the ARS "so the proceeds would be available at month end," the order ticket for the Pioneer preferred shares reflects a transaction date of Friday, January 25, 2008. However, that week's auction for the Pioneer preferred shares occurred on Thursday, January 24, 2008, and the next week's auction was scheduled for January 31, 2008. Because the sell order for the Pioneer preferred shares was placed six (6) days prior to the January 31, 2008 auction, the sell order was denied and cancelled, and based upon the records provided by Merrill the reason given for the cancellation reflects following:
- Early Order - Order should be sent no more than 3 days prior to auction date and no later than 12:15 (NY) on next auction day (01/31/2008).
18. Records provided by Merrill do not show a second sell order for the Pioneer preferred shares for the auction on January 31, 2008. The records provided by Merrill do reflect

a sell order for the Pioneer preferred shares placed on Friday, February 8, 2008. Because that sell order was placed more than three days before the weekly auction on Thursday, February 14, 2008, that sell order was denied and cancelled.

19. Records provided by Merrill reflect that a sell order for the Pioneer preferred shares was placed a third time on Monday, February 11, 2008; however, the Thursday, February 14, 2008, auction failed and the sale was not executed. The weekly auctions for the Pioneer preferred shares have continued to fail, and MR's Pioneer preferred shares have not liquidated to date.
20. Respondent states that he did not receive any notice of the cancellation of the January 25, 2008 order from Merrill personnel and otherwise was not aware of the cancellation. Also, because operations and management at Merrill had approved the issuance of a certified check to MR in the amount requested by MR in anticipation of the settlement of the sale of the two Pioneer preferred shares, and that the check had been delivered to the person designated by MR, he did not believe that he had a reason to verify the status of the order. Further, he was not aware of the order entered on February 8, 2008 or its cancellation, or of the order entered on February 11, 2008. He first became aware of the cancellation on February 13, 2008 when he learned from MR that there was a debit balance in her account. Respondent further states that he did not receive training from Merrill regarding the mechanics of the auction rate securities process, including the placement of orders.

## **ORDER**

**WHEREAS**, the Commissioner, after consideration of the findings of Fact set forth above and on the consent of Respondent and the Securities Division, finds the following Order to be in the public interest and necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo. (Cum. Supp. 2007).

NOW, THEREFORE, it is hereby Ordered that:

1. In the event the two Pioneer preferred shares are not sold at par within 30 days of the date of this Order, Respondent, or a person designated by Respondent, shall offer to purchase such preferred shares at par from MR within 15 days after the end of the 30 day period. If the preferred shares are sold during the 30 day period for a price less than par, Respondent, or a person designated by Respondent, shall pay MR the difference. In either case, Respondent shall provide to the Securities Division applicable evidence of compliance with this Order. This provision shall be deemed satisfied if MR does not accept the offer to purchase such preferred shares;
2. Respondent shall not pay a civil penalty, but shall instead, without an admission of any violation of Chapter 409, pay to the Missouri Investor Education and Protection Fund the sum of three thousand dollars (\$3,000.00). This amount shall be due and payable within thirty (30) days from the date of this Consent Order, and shall be submitted to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101;
3. The Withdrawal Order is vacated and the Respondent shall be conditionally registered as a securities agent in Missouri, effective the date of this Order, which registration shall become unconditional upon the satisfaction of the conditions set forth in this

Order; and

4. Respondent shall pay his own costs and attorney's fees with respect to this matter

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 10TH DAY OF JUNE, 2008.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

Nathan Soendker  
Missouri Securities Division

Charles D. Medelberg

Approved as to Form

John R. Short, Attorney for Respondent